

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

An application made under the Court of
Appeal (Procedure for Appeals from High
Court) Rule No. 5(1) made under Article
154(3) of the Constitution.

CA Application

No. (PHC) 52/2008

High Court of Badulla HCRA 105/2005

Magistrate Court No. 60182

K.M. Srimathie

“Sri Kanthi”, Indigahadowa

Lunuwatte.

Defendant- Petitioner – Appellant- Petitioner

Vs.

1. Provincial Secretary
Provincial Secretariat Office
Uva Paranagama
2. Hon. Attorney General
Attorney General’s Department
Colombo 12.
3. The Manager
Bank of Ceylon
Lunuwatte

Plaintiff-Respondent - Respondent-Respondent

BEFORE : K.T. Chitrasiri, J
W.M.M. Malinie Gunaratne, J.

COUNSEL : Sajeevi Siriwardena
For the Petitioner

Nayomi Kahawita, SSC.
For the Respondents

Argued on : 27.10.2014

Decided on : 13.03.2015

Malinie Gunaratne, J.

The Plaintiff – Respondent – Respondent (hereinafter referred to as the Respondent) instituted proceedings against the Defendant – Petitioner – Appellant (hereinafter referred to as the Petitioner) in the Magistrate’s Court of Welimada under the case No.60182/2005, in terms of Section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979 (as amended). It was filed on 27th July 2004, seeking for an order from the Magistrate’s Court ejecting the Petitioner from the premises morefully described in the schedule to the said application. The learned Magistrate pronounced the Order, dated 14/06/2005 granting the relief sought by the Respondent and made Order

ejecting the Petitioner from the premises morefully described in the schedule to the said application.

Being aggrieved by the said Order of the learned Magistrate, the Petitioner preferred the Application dated 22nd July 2005, that bears the No. 105/2005, to the High Court of Badulla, seeking that the Order of the learned Magistrate be revised. The learned High Court Judge pronounced the judgment dated 24th March 2007, by affirming the Order of the learned Magistrate and dismissed the Petitioner's application. The Petitioner has filed an Appeal in this Court to set aside the said Order of the learned High Court Judge of Badulla.

Pending the said Appeal, the 1st Respondent by way of a motion has moved the Magistrate's Court for an order to eject the Petitioner from the land depicted as Lot 299 of the Plan No. FVP 438. The learned Magistrate has ordered to eject the Petitioner from the above land. Being aggrieved by the said Order of the learned Magistrate, the Petitioner preferred an application No. HCRA 19/2010 to the High Court of Badulla, seeking to revise the Order of the learned Magistrate. The learned High Court Judge pronounced the order dated 26/07/2012, by affirming the Order of the learned Magistrate and dismissed the Petitioner's application. It is relevant to note that the Petitioner had not filed any appeal against the aforesaid Order of the High Court of Badulla delivered on 26/07/2012 in Case No. HCRA 19/2010. Hence, the Order dated 26/07/2012 should prevail.

In the instant application the Petitioner is seeking to set aside and vacate the Order of the learned Magistrate of Welimada dated 15.12.2009 and to stay the execution of the Order dated 15th December 2009 of the learned Magistrate of Welimada, until the final determination of the Appeal in this Court.

When this case was called on 27th October 2014, to support for interim relief referred to in sub paragraph (b) of the prayer to the Petition, the learned State Counsel objected to the Petitioner's application and submitted that the Petitioner is estopped from canvassing the validity of the Order made by the learned Magistrate dated 15.12.2009 in the instant application, which bears the No. PHC 52/2008, to set aside the Order of the Provincial High Court of Badulla in the case No. HCRA 105/2005.

She further submitted, at the time of filing the aforesaid Revision Application (HCRA 105/2005) the Petitioner had been dispossessed from the State Land consequent to the execution of the ejection order dated 14/06/2005. Nevertheless, the Petitioner had not disclosed the fact submitted by the State Counsel. It is a material suppression of fact that was within her knowledge at the time she filed the revision application. Therefore the Petitioner had deliberately deviated from the solemn principle of utmost good faith which is ex facie demonstrative of the Petitioner's unmeritorious conduct.

The learned State Counsel further submitted, that the instant application does not properly invoke or stipulate the provisions of the law under which it has been tendered. Accordingly, she submitted that it is misconceived and vexatious and thus the Petition be dismissed in limine.

It is significant to note that the Petitioner's Counsel has not addressed the aforesaid issues. The gist of the submissions of the learned Counsel for the Petitioner is, when there is an Appeal before this Court, the original Court's Order would be automatically stayed and therefore the execution of writ also must be stayed.

Nevertheless, in the written submissions filed in this Court by the Petitioner's Counsel, he has admitted, that mere lodging of an Appeal against a judgment of a High Court in the exercise of its Revisionary Powers, the Court of Appeal does not automatically stay the execution of the Order of a High Court. (Jayantha W. Gunasekara alias Kananke Dammadinna vs. Jayatissa W. Gunasekara C.A (PHC) APN 17/2006, Nandawathie vs. Mahindasena C A (PHC) 242/06.

In view of the decisions mentioned above I hold that there is no merit of his submission made on that issue by the Petitioner's Counsel.

The crucial question that now arises for consideration is whether the Petitioner is estopped from canvassing the validity of the Order made by the learned Magistrate dated 15/12/2009. It is relevant to note that the same

Order had been canvassed and sought to be revised in a Revision Application filed by the Petitioner in the case No. HCRA 19/2010. The High Court Judge of Badulla made an order on 26/07/2012, affirming the eviction order dated 14/06/2005 as well as the consequent order of 15/12/2009. I am of the view, since there is no Appeal filed against that order, the Order dated 26/07/2012 should prevail.

Apart from that, the Petitioner does not properly invoke or stipulate under which provision of law or rule that this application has been filed. In this instance therefore on the admitted facts I am of the view that the Petitioner is not entitled to make this application.

I now turn to the 2nd issue argued on behalf of the Respondents regarding suppression of all material facts. In filing the present application in the Court of Appeal Registry, the Petitioner was under a duty to disclose all material facts to this Court for this Court to arrive at a correct adjudication on the issues.

In the decision in *Alphonso Appuhamy vs. Hettiaratchi* 77 N.L.R. 121, Justice Pathirana held that when a party is seeking a relief from this Court upon an application, he enters into a contractual obligation with the Court when he files an application in the registry and in terms of that contractual obligation he is required to disclose all material facts fully and frankly to this Court.

It is manifestly clear that the Petitioner has been remiss in duty and has failed to carry out its imperative legal duty and obligation to Court. In such circumstances, Justice Pathirana ruled that the Court is entitled to raise this matter in limine and dismiss the application without investigating into the merits of the application.

The necessity of full and fair disclosure of all the material facts to be placed before the Court when an application is made and the process of the Court is invoked, I hold that the Petitioner has failed to make a full and frank disclosure of all material facts to Court and the Petitioner has been remiss in complying with the aforesaid contractual obligation to Court.

In the above circumstances, I am of the view that there is no necessity to consider with regard to the other matters.

In all the facts and circumstances stated above, I refuse the application made in sub paragraph (b) of the prayer to the Petition.

Application for Stay Order is refused.

JUDGE OF THE COURT OF APPEAL

I agree

JUDGE OF THE COURT OF APPEAL